

Disability Rights are Civil Rights: Tips for Navigating the Intersections Between ADA/Section 504, Title IX, and Title VI Obligations

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Today's Road Map

- Overview of Section 504/ADA, Title and Title VI
- Role of Title IX and Section 504/ADA Coordinators
- Accommodations and Supportive Measures
- Pregnant and Parenting Students
- The Importance of Collaboration/Coordination
- Q&A

Applicable Law and Policy

- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Amendments Act (2008)
- State and local disability laws and ordinances
- AND:
 - Other federal and state civil rights laws regarding race, national origin, sex, pregnancy, etc.
 - Your institution's mission/vision/values, often rooted in DEI, belonging, and/or justice principles

Title IX Law Landscape

- June 23, 2022, US Department of Education published proposed new Title IX regulations (NPRM), on the 50th anniversary of Title IX
 - Solicited public comments, and received over 240,000 comments
 - Final rule date keeps shifting: May 2023 — October 2024 - March 2024 — Summer 2024?
 - Sent to OMB (Office of Management and Budget) on February 2, 2024 (up to 90 days, and can request extension)
 - Effective date tbd
 - Separate Title IX athletics review timing is delayed

Pregnant Workers Fairness Act

Requires reasonable accommodations for known limitations

Related to pregnancy, childbirth or related condition

UNLESS causes undue hardship

Only applies to accommodations

KEY: May require temporary suspension of essential job functions

Effective date: June 27, 2023

Disability Law Landscape

- May 6, 2022, U.S. Department of Education announced intent to amend the regulations implementing Section 504
 - Solicited public comments very broadly – simply asked for written comments on how best to improve the current regulations
 - A number of groups submitted comments to ED
 - Concern that the refresh and NPRM for Section 504 won't happen now, due to election year...but many are pushing to let current administration know how vital the refresh is

Title IX

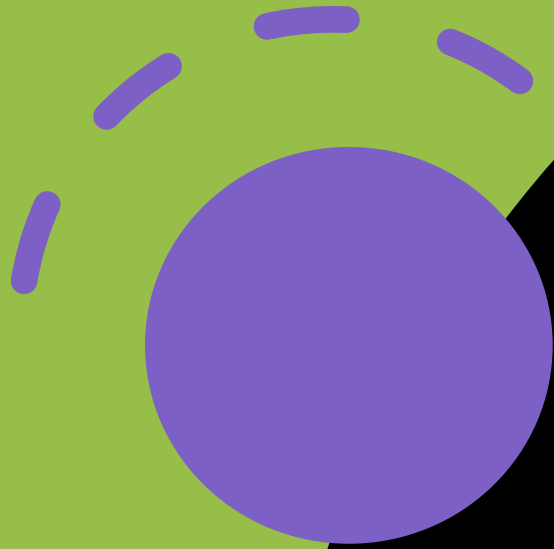
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Section 504

No otherwise [qualified individual with a disability] in the United States...shall, solely by reason of [their disability] be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title VI Law Landscape

- Prohibits discrimination, including harassment, based on race, color, and national origin by recipients of FFA
- While Title VI does not apply to religion, *per se*, OCR has made clear it applies to *shared ancestry and ethnic characteristics*
- November 2023 OCR Dear Colleague letter (DCL):
Discrimination/Harassment Shared Ancestry and Ethnic Characteristics
- March 2024 OCR DCL: Discrimination Against Muslim, Arab, Sikh, South Asian, Hindu, and Palestinian Students
- OCR maintaining List of Open Title VI Shared Ancestry or Ethnic Characteristics Investigations



Title IX and Section 504/ADA Coordinator Roles

Title IX Coordinator

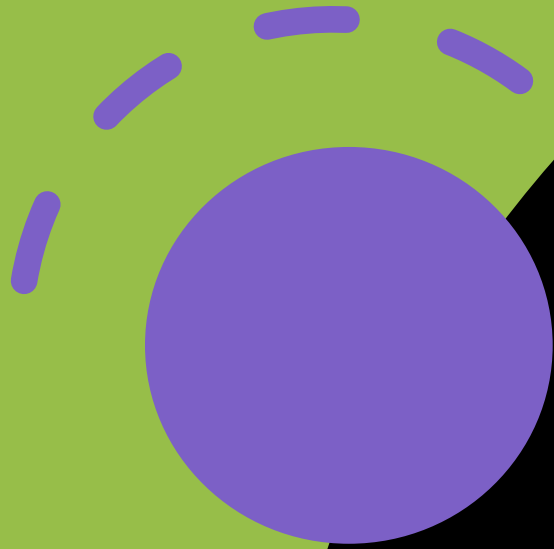
- Every FFA recipient (e.g., K-12, College, University) **MUST**:
 - Designate **AT LEAST ONE** employee to coordinate its responsibilities under Title IX
 - **NOTIFY** applicants for admission and employment, students, parents, employees, and unions/professional organizations of the Title IX Coordinator's contact information (name or title, office address, email address, and telephone number)
 - **PROMINENTLY DISPLAY** the contact information for the Title IX Coordinator and its Title IX Policy on its website, if any, and in each handbook or catalog
 - **ENSURE** Title IX Coordinators, investigators, decision-makers and informal resolution facilitators are trained on the definition of sexual harassment, the scope of the education program and activity, how to conduct an investigation and grievance process, and how to serve impartially.

Disability (504/ADA) Coordinator

- Every recipient (e.g. K-12, College, University) that employs 15 or more persons **MUST**:
 - Designate **AT LEAST ONE** person to coordinate its efforts to comply with Section 504
 - Include identification of the 504 Coordinator in its notices
 - Adopt and publish grievance procedures
- See 34 C.F.R. § § 104.7, 104.8
- A public entity that employs 50 or more persons **MUST**
 - Designate **AT LEAST ONE** employee to coordinate its efforts to comply with ADA
 - Make available the name, office address, and telephone number of the designated employee
 - Adopt and publish a complaint procedure
- 28 C.F.R. § 35.107

What does a Coordinator *actually* do?

- May depend on the population served – different coordinator for employees v. students
- Manage the recipient's compliance program
- Implement accommodations or supportive measures
- Implement the grievance procedure, complaint process, etc.
- Provide expertise on the relevant law to other offices
- Education/training
- Collaborate with various stakeholders



Accommodations and Supportive Measures

Academic Adjustments and Auxiliary Aids and Services (Students)

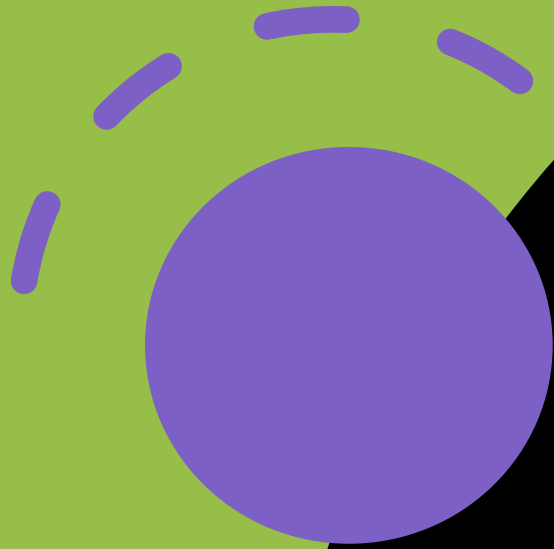
- Based on disability and individual needs
- Modifications as necessary to ensure equal educational opportunity
- Not required to lower or waive essential academic requirements or fundamentally alter or cause undue financial/admin burden
- School can request medical/health documentation of disability and functional limitations
- School cannot require student to pay for approved accommodation

Title IX Supportive Measures: Current Guidance

- Available to Complainants and Respondents
- Designed to restore or preserve equal access to education/employment, protect student and employee safety, or deter sexual harassment
- At no cost and as reasonably available
- Do not require a Formal Complaint
- Like student disability accommodations, if they fundamentally alter a program or lower academic standards, they are not *reasonably available* and need to consider alternatives—**BUT...**
- The documentation requirements are not as prescriptive as they may be for a student or employee with a disability

Title IX Supportive Measures: Set the Stage for Success

- Title IX and Section 504/ADA Coordinators (and their designees) must effectively coordinate and regularly communicate
- Develop, prominently publish, and consistently implement clear processes for requesting disability accommodations and/or “Title IX accommodations”/supportive measures
- Educate community members (faculty/staff/students) on the differences between the processes—and the roles of the Title IX and 504/ADA Coordinators
- Develop a feedback loop through advocacy/ally committees, online feedback forms, surveys, etc.
- Periodically update processes as necessary and appropriate



"I am a pregnant student. Where do I go for help?"

Disability Services

IF PREGNANCY COMPLICATIONS:


- Register as a student with a disability
- Engage in the interactive process
- Auxiliary aids and academic adjustments (i.e., “reasonable accommodations”) in the classroom
- Modifications to policies and procedures
- Accommodations for extracurricular activities (e.g., debate club, athletics)
- Pregnancy (or other temporary disability) accommodations
- Informal *voluntary* process for review of approved accommodations


Title IX/Equity Office

IF TYPICAL PREGNANCY:

- Supportive measures (e.g., extension of time, connection to counseling, etc.) with or without filing a Formal Complaint
- Pregnancy (and related conditions) and parenting accommodations
- Report concerns/file a Formal Complaint about failure to accommodate or other discrimination/harassment/retaliation related to a protected characteristic (e.g., sex, disability, etc.)
- Learn about your rights

Website Example

 Office for Equity, Equal Opportunity, and Title IX

[Get Help](#) ▾ [Policy and Reporting Options](#) ▾ [Training and Other Resources](#) ▾ [Employment Equity](#) [About Us](#) [What Are My Choices?](#) 

Student Supportive Measures

All About Student Supportive Measures

1. What are supportive measures?

Supportive measures are non-disciplinary, non-punitive, individualized support services available to students who believe they may have currently (or in the past) experienced discrimination, harassment, or retaliation related to one or more protected characteristics, such as race, gender, disability, etc.

2. What is their purpose?

They are designed to address a student's safety and well-being as well as to ensure that, despite what students may be experiencing, their continued access to University programs and activities is preserved or restored.

[EEO-TIX Partnership with Keck Medicine of USC](#)

[What Are My Choices?](#)

[Student Supportive Measures](#)

[Confidential and Private Resources](#)

Accommodations: Grievance Process

- Address accommodations in Policy and Procedures
- Coordinate with ADA Coordinator/Disability Services Office as Resources
 - Provide notice of process for requesting accommodations
- Collaborate with ADA Coordinator./Disability Services Office to confirm disability and identify appropriate accommodations
- Consider utilizing universal design and accessibility principles in your investigation and hearing process
 - Ex. plain language, multiple modalities of communication, physically accessible buildings, captioned meetings, accessible websites and materials

Best Practices: Title IX Resolution Process

Title IX Coordinator

- Check with Disability Services as to whether parties are registered as students with disabilities (do not include party role or details)
- Include in Notices of Investigation/Hearing, etc. a statement advising parties to request reasonable accommodations for a disability, as needed

TIX & Disability Services

- Both parties request disability-related accommodations
- Title IX and Disability Services consult to identify appropriate accommodations

Possible outcomes

- Written questions in advance
- Time to process before answering questions
- Presence of an emotional support animal
- **IMPORTANT NOTE:** do not have to be registered with Disability Services to receive accommodations

Common Accommodations: Title IX Resolution Process

- Notetaker
- Written questions
- Frequent breaks
- Additional support person
- Captioning
- Interpreter
- Written copies of reports, letters, evidence, etc.
- Emotional Support Animal

Sample Notice Language

Procedure for requesting reasonable accommodations

If you are an individual with a disability and need a reasonable accommodation in order to fully and effectively participate in the University's resolution process, please notify me as soon as possible. I will work with the [Disability Services Office/ADA Coordinator] to ensure reasonable accommodations are provided. While such requests may be made at any point during the process, individuals are strongly encouraged to make their request known at the earliest possible time and, if possible, five business days in advance of an anticipated activity where the accommodation is needed (such as an interview or hearing).

Questions and Discussion

What examples do you have for what is working well or what could be improved regarding partnerships between Title IX offices and Disability services in investigations?

Pregnancy and Parenting
Accommodations
Under the *Current* Title IX
Requirements



U.S. Department of Education

Office for Civil Rights

October 2022

Discrimination Based on Pregnancy and Related Conditions

A Resource for Students and Schools

Current Title IX Requirements

- June 2013 *Dear Colleague Letter* and Pamphlet on *Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972*
- October 2022 Fact Sheet: *Discrimination based on Pregnancy and Related Conditions*
- Each prohibit/address:
 - Discrimination and exclusion based on pregnancy/parenting
 - Medical and other benefits and services
 - Discriminatory leave policies
- Covers false pregnancy, termination from pregnancy, and post-partum recovery

Common Title IX Pregnancy Modifications

- Excused absences/leave
- Extended time*
 - What does this mean? How implement?
- Frequent breaks
- Remote participation*
 - Important considerations (informed by COVID-19 pandemic):
Duration: less than a full semester course? Type: Virtual or asynchronous? What is happening for students with disabilities?
- Change in seating assignments

2022 OCR Decision: Salt Lake CC

OCR investigated whether:

- Professor encouraged a student to drop a course because she was pregnant and told student that she needed to “accept responsibility for her pregnancy;”
- Title IX Coordinator promptly and equitably responded to a report of the Professor’s conduct;
- College engaged in an interactive process with the student to provide her with accommodations during her pregnancy in the same manner that the College provides to students with temporary medical conditions; and
- College excused the student’s pregnancy-related absences and allowed her to submit work after pregnancy-related absences

Source: OCR Case No. 08-22-2021

2022 OCR Decision: Salt Lake CC

OCR's Factual Findings:

- Student was enrolled in a program with an attendance policy that did not allow lateness (or tardiness) in more than 20% of classes for each course.
- Student experienced nausea throughout the day and requested modification of policy and deadlines for assignments
 - Professor: “health is more important than a class”
- Student contacted Disability Resource Center
 - DRC: “pregnancy falls under Title IX”
- Student contacted Title IX Coordinator about request for adjustment and professor’s comments
 - Title IX Coordinator: adjustments possible “with limits” but request constituted a fundamental alteration; alternatives not provided to student

2022 OCR Decision: Salt Lake CC

OCR investigated whether:

- College failed to respond promptly and equitable to the student's complaint of pregnancy discrimination, in violation of Title IX
- College failed to engage in an interactive process with the student to determine the appropriate special services and/or academic adjustments to provide in light of her pregnancy, in violation of Title IX
- College failed to engage in an interactive process with the student and failed to consider whether the student's pregnancy caused a temporary disability requiring academic adjustments, in violation of Section 504
- College failed to excuse the student's absences related to pregnancy, provide her the opportunity to make up work missed due to absences related to pregnancy, or provide alternatives to making up missed work at a later date, in violation of Title IX

Salt Lake CC: OCR Resolution Agreement

- **Policies and Procedures**

- Notice of Non-Discrimination (revise to include pregnancy and related conditions, parental/familial/marital status)
- Grievance Procedures (revise to include information about opportunity to file pregnancy discrimination grievance)

- **Title IX and Disability Resource Center webpages**

- Information about rights of pregnant and parenting students
- Information about process for requesting accommodations/adjustments and addressing denials of requests
- Information about fundamental alteration process

- **Training** for faculty member, Title IX staff, and Disability Resource Center staff

- **Individual Remedies**

Troy University: 2023 OCR Resolution Agreement (OCR Case No. 04-21-2060)

- Pregnant student who experienced illness, hospitalization due to complications, and early labor
- Issues with attendance
- Professor contacted Title IX coordinator for guidance
- Lack of communication with professor or student by Title IX
- University provided no information to student in handbook or on websites as to how to request accommodations
- OCR found “no interactive process”—some accommodations from some professors but efforts “were ad hoc” and uncoordinated, and subject to individual interpretation of each professor

Troy University: 2023 OCR Resolution Agreement (OCR Case No. 04-21-2060)

- **Policies and Procedures**

- Review, revise, and implement to make clear how request pregnancy accommodations

- **Website Updates**

- The University will publish prominently on its website and elsewhere, as appropriate, information regarding: (i) the Title IX rights of—and the University’s obligations to—pregnant students; (ii) the procedure for pregnant students to request adjustments to the regular program; (iii) the name and contact information for the individual(s) tasked with coordinating the University’s response to requests for adjustments from pregnant students; (iv) if different from (iii) above, the name and contact information for the University’s Title IX Coordinator; and (v) the grievance procedure for students to file complaints of sex discrimination

- **Training Regarding Rights of/Obligations to Pregnant Students**

- Including survey of faculty/staff knowledge, post-training

- **Tracking System for Pregnancy Accommodation Requests**

- **Individual Remedies**

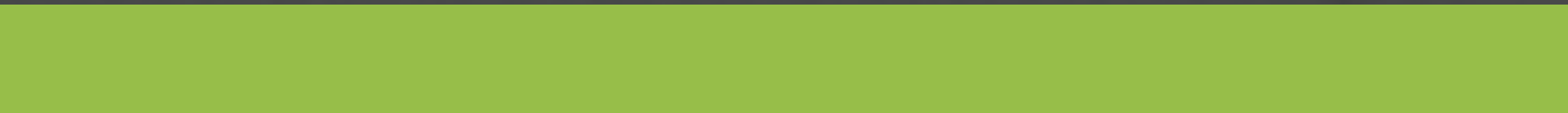
Pregnancy Related Conditions: Lactation

- Lactation is a pregnancy-related condition that must be accommodated
- Best practice = Implement a Pregnancy Accommodations Policy
- Under proposed Title IX rule, must provide lactation spaces that are:
 - clean
 - shielded from view
 - free from intrusion from others
 - may be used by a student for expressing milk or breastfeeding as needed
- *Where to start if you don't have a policy?*

Stanford's Pregnancy, Childbirth, Adoption, and Lactation Policy 5.9.1



Connecting The Dots Through Collaboration



Opportunities for Collaboration

- **Reality** = overlap between disability related accommodations for temporary disability and pregnancy accommodations
- **Solution** = close coordination between Title IX coordinator and HR (for employees) and disability services (for students)
- NPRM proposes specific steps the Title IX Coordinator must take regarding pregnancy accommodations:
 - Notifications
 - Resources
 - Processes

ADA Coordinator and Title IX process

- Intentional collaboration
- Education and Training for Title IX staff
- Ensure ADA Coordinator/Disability Services Office staff are knowledgeable in Title IX processes
- Title IX and disability services office collaboration outside of investigations
 - e.g., Global Accessibility Awareness Day, tabling events, student group meetings, joint education workshops

Title IX and Disability Services Offices

- Regular check-ins between Title IX office and Disability Services Offices
- Plan joint projects/initiatives
- Develop protocols for sharing information
- Identify shared areas of concern/opportunity
- Shared events
- Policy review/input

At the Cross Roads: A Scenario

- A student respondent in a sexual misconduct investigation has ADHD and requires extended time on assignments in the classroom
 - What is your obligation in the Title IX hearing/resolution process?
- The student respondent also is a parent of a one-month old baby and typically would be on baby bonding leave during the Title IX hearing
 - What do you do?
- Both parties (Complainant and Respondent) in the Title IX resolution process are Jewish and are experiencing harassment on campus
 - What do you do?



**Thank
You!**